

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CAM EASH,

Petitioner,

v.

WILLIAM GITTERE, *et al.*,

Respondents.

Case No. 3:19-cv-00488-MMD-CLB

ORDER

I. Introduction

This habeas corpus action was initiated under 28 U.S.C. § 2254, on August 14, 2019, by Cam Eash, an individual incarcerated at Nevada's Ely State Prison. Respondents have filed a motion to dismiss (the "Motion") (ECF No. 15), arguing that certain of Eash's claims are unexhausted in state court and that certain of his claims are not cognizable in this federal habeas action. The Court will grant the Motion in part and deny it in part, will dismiss two of Eash's claims, and will set a schedule for Respondents to file an answer responding to his remaining two claims.

II. Background

After Eash was charged in a justice court and waived a preliminary examination, he was charged on October 6, 2015, by Information, in Nevada's Second Judicial District Court, with: possession of a stolen motor vehicle; eluding or failing to stop on the signal of a peace officer and endangering other persons or property; possession of a firearm by a prohibited person; robbery with a deadly weapon; and grand larceny of a motor vehicle. (See ECF No. 16-3 (Waiver of Preliminary Examination); ECF No. 16-4 (Information).)

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1 On January 14, 2016, Eash entered into a plea agreement and pled guilty to
2 eluding or failing to stop on the signal of a peace officer, endangering other persons or
3 property, and robbery with a deadly weapon. (See ECF No. 16-17 (Guilty Plea
4 Memorandum); ECF No. 16-18 (Transcript of Proceedings, January 14, 2016).)

5 On March 8, 2016, Eash was sentenced to: 28 to 72 months in prison for eluding
6 or failing to stop on the signal of a peace officer and endangering other persons or
7 property; and 72 to 180 months in prison for the robbery with a deadly weapon; and 12 to
8 30 months in prison for use of the deadly weapon. (See ECF No. 16-20 (Judgment of
9 Conviction).) The three prison sentences were to run consecutively. (See *id.*) The
10 judgment of conviction was entered on March 14, 2016. (See *id.*)

11 Eash appealed. (See ECF No. 16-24 (Notice of Appeal); ECF No. 16-30 (Fast
12 Track Statement).) The Nevada Court of Appeals affirmed the judgment of conviction on
13 September 21, 2016. (See ECF No. 16-35 (Order of Affirmance).)

14 Eash then filed a petition for writ of habeas corpus in the state district court on
15 October 4, 2016. (See ECF No. 16-36 (Petition for Writ of Habeas Corpus).) The court
16 held an evidentiary hearing. (See ECF No. 17-5 (Transcript of Proceedings, April 14,
17 2017); ECF No. 17-17 (Transcript of Proceedings, February 16, 2018).) The court denied
18 Eash's petition in a written order filed on March 14, 2018. (See ECF No. 17-19 (Findings
19 of Fact, Conclusions of Law and Order).) Eash appealed. (See ECF No. 17-18 (Notice of
20 Appeal); ECF No. 17-29 (Appellant's Informal Brief).) The Nevada Court of Appeals
21 affirmed the judgment of the state district court on January 17, 2019. (See ECF No. 17-
22 35 (Order of Affirmance).)

23 This Court received Eash's *pro se* habeas petition (the "Petition"), initiating this
24 federal habeas corpus action, on August 14, 2019. (See ECF No. 6.) The Court reads the
25 Petition to assert the following claims:

26 Ground 1A: The trial court "abused its sentencing discretion by
27 basing its sentence in part on the so-called 'victim-impact' statement of
28 Officer Anthony Marconato."

1 Ground 1B: “The supposed victim in the robbery has contacted
2 [Eash’s] family to say he wants to testify that he was threatened by Sparks
3 police into making a false statement.”

4 Ground 2A: Eash’s federal constitutional rights were violated as a
5 result of ineffective assistance of counsel, because, before he pled guilty,
6 his trial counsel inaccurately advised him about the sentence he could
7 receive.

8 Ground 2B: Eash’s federal constitutional rights were violated as a
9 result of ineffective assistance of counsel, because Eash’s trial counsel first
10 told Eash she had a statement from the robbery victim saying police
11 threatened him with arrest unless he made a statement against Eash, then,
12 at a later date, trial counsel told Eash she did not have such a statement
13 and the robbery victim would testify against Eash.

14 (See *id.*)

15 On January 16, 2020, Respondents filed the Motion (ECF No. 15) and supporting
16 exhibits (ECF Nos. 16, 17). Eash did not respond to the Motion.

17 **III. Analysis**

18 **A. Grounds 1A and 1B**

19 Ground 1A is Eash’s claim that the trial court “abused its sentencing discretion by
20 basing its sentence in part on the so-called ‘victim-impact’ statement of Officer Anthony
21 Marconato.” (ECF No. 6 at 6-11.) Ground 1B is Eash’s claim that “[t]he supposed victim
22 in the robbery has contacted [Eash’s] family to say he wants to testify that he was
23 threatened by Sparks police into making a false statement.” (*Id.* at 12.) Respondents
24 contend that the claims in Grounds 1A and 1B are not cognizable in a federal habeas
25 corpus action. (See ECF No. 15 at 7-9.) The Court agrees.

26 Neither Ground 1A nor Ground 1B includes any claim of a violation of federal law.
27 Ground 1A is a claim that the trial court abused its discretion under state law. (See ECF
28 No. 6 at 6-11.) Ground 1B is a claim that a witness would now retract his testimony and
testify differently. (See *id.* at 12.) Federal habeas corpus relief is available only for
violations of federal law. See 28 U.S.C. § 2254(a). “[F]ederal habeas corpus relief does
not lie for errors of state law.” *Estelle v. McGuire*, 502 U.S. 62, 67 (citations omitted); see
also *Lewis v. Jeffers*, 497 U.S. 764, 780 (1990).

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1 As Grounds 1A and 1B contain no allegation of a violation of federal law, they are
2 not cognizable in this federal habeas corpus action. The Court will, therefore, grant the
3 Motion with respect to Grounds 1A and 1B and will dismiss those claims.

4 **B. Grounds 2A and 2B**

5 Grounds 2A and 2B are claims that Eash's federal constitutional rights were
6 violated on account of ineffective assistance of his trial counsel. (See ECF No. 6 at 13.)
7 In Ground 2A, before Eash pled guilty, Eash claims trial counsel inaccurately advised him
8 about the sentence he could receive. (See *id.*) In Ground 2B, Eash claims his trial counsel
9 first told Eash she had a statement from the robbery victim saying police threatened him
10 with arrest unless he made a statement against Eash; then, at a later date, trial counsel
11 told Eash she did not have such a statement and the robbery victim would testify against
12 Eash. (*Id.*) Respondents contend in the Motion that the claim in Ground 2B is
13 unexhausted in state court. (See ECF No. 15 at 5-6.) The Court disagrees.

14 A federal court may not grant habeas corpus relief on a claim not exhausted in
15 state court. 28 U.S.C. § 2254(b). The exhaustion requirement is based on the policy of
16 federal-state comity, and is intended to allow state courts the initial opportunity to correct
17 constitutional violations. See *Picard v. Conner*, 404 U.S. 270, 275 (1971). To exhaust a
18 claim, a petitioner must fairly present the claim to the highest available state court and
19 must give that court the opportunity to address and resolve it. See *Duncan v. Henry*, 513
20 U.S. 364, 365 (1995) (per curiam); *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 10 (1992). A
21 claim is fairly presented to the state court if, before that court, the petitioner describes the
22 operative facts and legal theory upon which the claim is based. See *Anderson v. Harless*,
23 459 U.S. 4, 6 (1982) (per curiam); *Picard*, 404 U.S. at 275; *Batchelor v. Cupp*, 693 F.2d
24 859, 862 (9th Cir. 1982).

25 Eash asserted a claim like that in Ground 2B in his state habeas petition. (See
26 ECF No. 16-36 at 9.) And, on his appeal in that case, Eash's *pro se* brief can reasonably
27 be read to appeal the denial of that claim. (See ECF No. 17-29 at 4-7.) In fact, the Nevada
28 Court of Appeals recognized that Eash's brief could be read in that manner and denied

1 the claim on its merits. (See ECF No. 17-35 at 4 n.3.) Ground 2B is therefore exhausted
2 in state court.

3 Respondents make no argument for dismissal of Ground 2A.

4 The Court will, therefore, deny the Motion with respect to Grounds 2A and 2B and
5 will set a schedule for Respondents to file an answer responding to those claims.

6 **IV. Conclusion**

7 It is therefore ordered that Respondents' Motion to Dismiss (ECF No. 15) is
8 granted in part and denied in part. Grounds 1A and 1B of the Petition for Writ of Habeas
9 Corpus are dismissed; in all other respects, the Motion to Dismiss is denied.

10 It is further ordered that Respondents will have 90 days from the date of this order
11 to file an Answer, responding to the remaining claims in the Petition for Writ of Habeas
12 Corpus, which are Grounds 2A and 2B, as construed in this order.

13 It is further ordered that, in all other respects, the schedule for further proceedings
14 set forth in the order entered on September 10, 2019 (ECF No. 5) will remain in effect.
15 Petitioner will have 60 days after the filing of Respondents' Answer to file a Reply.

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17 DATED THIS 7th day of May 2020.

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20 MIRANDA M. DU
21 CHIEF UNITED STATES DISTRICT JUDGE
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